Agenda Date: 2/22/06
Agenda Item: 8A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

DIVISION OF AUDITS

IN THE MATTER OF THE APPLICATION FOR A MODIFICATION OF ECONNERGY'S SURETY BOND AMOUNTS	)))))	ORDER DOCKET NOS. EE04050378L & GE04050377L

SERVICE LIST ATTACHED

BY THE BOARD:

This matter was opened to the Board by an application from ECONnergy Energy Company, Inc. ("ECONnergy") seeking a reduction in the amount of the surety bonds required as part of receiving a license to be a third party supplier of natural gas and/or electric power under the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 et seq.

Under EDECA, a party seeking either an electric power supplier license or a natural gas supplier license is required to "maintain a surety bond under terms and conditions as determined by the board." N.J.S.A. 48:3-78(c)(4); N.J.S.A. 48:3-79(c)(4). The Board has promulgated regulations that have set the surety bond amount at $250,000 per license, and sets forth a process by which the surety bond amount may be modified based upon anticipated business where "substantial evidence is submitted in support of the modification." N.J.A.C. 14:4-2.6(e)(1-2). The regulations further note that the purpose of the surety bond is to "insure against a failure to pay taxes or assessments, or a failure to meet contractual commitments to customers to deliver electric generation service or gas supply service." N.J.A.C. 14:4-2.6(e).

ECONnergy was originally licensed as both a natural gas and electric provider in the State of New Jersey on August 18, 1999 and has since provided the required $250,000 surety bonds for each license. After a number of informal attempts to have its bonds reduced or eliminated entirely, ECONnergy has now filed the current application in support of that request. As to the surety bond submitted for the electric power supplier license, ECONnergy claims that it does not now or in the foreseeable future expect to serve any load in the State but nevertheless wishes to retain the license while requesting that the surety bond be reduced to zero. At such time as ECONnergy begins to serve customers, it claims, it will alert the Board and provide an appropriate surety bond.

As for the surety bond submitted for the natural gas supplier license, ECONnergy claims that because it, like all other suppliers, enters into securitized agreements with the ultimate providers to ensure a continuity of service in the event of a default, the $250,000 surety bond is unnecessary. Likewise, the State need not worry about taxes as the primary supplier, in the event of a default by ECONnergy, would continue to collect and would thus be able to remit. ECONnergy asserts in its letter dated December 21, 2005 that its tax liability is approximately $100,000 per month, which is less than the $250,000 surety bond required. As such, it calls for the elimination or reduction of this surety bond as well. (Clearly, the company's argument is erroneous as a $100,000 monthly tax liability totals $1.2 million per year and therefore is significantly more than the one time requirement of a $250,000 surety bond).

Based upon a review of the record, the statute, the regulations and the Board's previous communications with ECONnergy, the Board DECLINES to reduce the bond requirements. EDECA and the associated regulations provide that a third party supplier must produce a surety bond, and the Board has set the standard surety bond at $250,000. The Board currently provides the ability to seek a reduction in this surety bond,[1] but requires the showing of "substantial evidence." N.J.A.C. 14:4-2.6(e)(2). That showing has not been made here.

ECONnergy asks for the ability to retain an electric supplier license with no surety bond; this is in direct contradiction to EDECA. ECONnergy's claim that it wishes to keep the license while not actually serving any parties does not mitigate the need for a surety bond. With a license, ECONnergy is fully authorized to serve customers; while it has noted that it would "inform" the Board prior to doing so, nothing in the Board's regulations require such action. As such the result could be a situation where a third party supplier is authorized to serve customers, yet has provided no surety bond in direct contravention of EDECA. If ECONnergy wishes to neither serve customers nor provide a surety bond, it should forego the license. If it chooses to retain the license, it must maintain a surety bond of $250,000.

In a similar vein, the "evidence" provided for the reduction in the gas surety bond is identical to the situation all third party gas suppliers find themselves in. As ECONnergy notes, all third party suppliers are required to enter into securitization agreements, and all third party suppliers have the taxes included in the sale price of the commodity. Within this framework, the Board has already noted that the minimum bond amount should be $250,000. ECONnergy has simply noted that it behaves as the Board expects and requires. Nothing provided by the company serves as a foundation for the reduction or elimination of the surety bond – in fact, an argument could be made that, with approximately 9,000 residential customers and 1,000 commercial and industrial, the surety bond amount should be increased.

[1] It should be noted that the Board, in its proposed readoption of these regulations, has removed the provision allowing for a modification of the surety bond amount. This readoption has not yet taken place, so this matter is considered under the existing regulation.

Nevertheless, at this time, the Board HEREBY FINDS that ECONnergy's current surety bonds amounts of $250,000 are appropriate and proper, and therefore HEREBY ORDERS that the motion to have the surety bond amounts reduced is DENIED.

DATED: 2/24/06

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PRESIDENT

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FREDERICK F. BUTLER
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ATTEST:

Kristi Izzo
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

Kristi Izzo

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